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TRANSCRIPT OF RECORD

15,533

Supreme Court of the United States

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE, PETITIONER,

vs.

FRANCIS E. BEACH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 5, 1937.

CERTIORARI GRANTED MARCH 8, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE, PETITIONER,

vs.

FRANCIS E. BEACH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Agreed statement of facts under Equity Rule 77	1	1
Memorandum of decision of D. C. U. S., District of Connecticut, on order to show cause	12	7
Clerk's certificate (omitted in printing)	13	
Opinion, Hand, J.	15	9
Judgment	17	12
Clerk's certificate	19	13
Order allowing certiorari	20	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 10, 1937.

—8820-C

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

In the Matter of FRANCIS E. BEACH, Debtor.

AGREED STATEMENT OF FACTS UNDER EQUITY RULE 77

It is hereby stipulated by and between counsel for the respective parties to the appeal of Francis E. Beach, Debtor, from the order rendered by the Honorable Carroll C. Hincks, a Judge of the United States District Court for the District of Connecticut, on December 2, 1935, dismissing the petition of said Francis E. Beach, debtor, praying for an opportunity to effect a composition or extension of his debts under Section 75 of the Bankruptcy Act as amended to the date of the filing of said petition, that the questions presented by this appeal can be determined by the Circuit Court of Appeals for the Second Circuit without an examination of all the pleadings and evidence and that the following agreed statement of facts shows how the questions arose in said District Court and sets forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the Circuit Court of Appeals for the Second Circuit:

[fol. 2] That on November 14, 1935, said Francis E. Beach, debtor, and the appellant herein filed a petition in the United States District Court for the District of Connecticut in which he alleges he is bona fide engaged primarily in farming operations and that he is bona fide engaged primarily in producing products of the soil, under Subsection R of said Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203 (r).

That said Francis E. Beach further alleges in said petition that he is unable to meet his debts as they mature.

That said Francis E. Beach prays in said petition for an opportunity to effect a composition or extension of his debts under said Section 75 of the Bankruptcy Act as amended and that his petition may be approved by the Court and proceedings had in accordance with the provisions of said Section.

That on said November 14, 1935, said petition was approved by Honorable Carroll C. Hincks, a Judge of the

United States District Court for the District of Connecticut as properly filed under said Section 75 of the Bankruptcy Act as amended and said petition was referred to the Conciliation Commissioner for Fairfield County, in the State of Connecticut.

That on November 21, 1935, the First National Bank & Trust Company of Bridgeport, Connecticut, as trustee, the owner of a mortgage on the farm property of said Francis [fol. 3] E. Beach, filed a petition in said Court praying for an order to be made on said debtor to show cause why the order of said Court approving the petition of said debtor as properly filed under said Section 75 of the Bankruptcy Act as amended, should not be vacated and the petition of said debtor dismissed on the ground that said debtor is not a "farmer" within the terms of Subsection R of said Section 75 of the Bankruptcy Act as amended by Act of Congress, 11 U. S. C. A. 203 r.

That on said November 21, 1935, the Honorable Carroll C. Hincks, a Judge of the United States District Court for the District of Connecticut issued an order to said debtor to appear in Court on November 27, 1935, and show cause why the prayer of said petition to show cause should not be granted.

That after a hearing on said cause order, the Honorable Carroll C. Hincks, on December 2, 1935, ordered the petition of said Francis E. Beach, praying for an opportunity to effect a composition or extension of his debts under Section 75 of the Bankruptcy Act as amended, dismissed on the ground that debtor is not a "farmer" within the purview of Sub-section R of said Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203 (r), inasmuch as the debtor's yearly income from 1930 to 1935 has been as follows: $200 from poultry and eggs; $75 from hay; $25 for vegetables and flowers; $2200 from the rental of his farm to others who [fol. 4] used it for their own purposes; and $1500 from rentals of other real estate not claimed to be "farm" property; and inasmuch as the item of $2200 received from the rental of the farm property is income to the debtor in his capacity as a landlord rather than as one who is "bona fide personally engaged in producing products of the soil, etc.," 11 U. S. C. A. 203 (r).

At the hearing of said order to show cause the following facts were alleged and proved, or sought to be proved:

That Francis E. Beach, the debtor and appellant herein is the owner of a farm situated on the east and west sides of the main highway through the town of Trumbull, in the county of Fairfield, and state of Connecticut, comprising 190 acres, more or less, with five houses and a barn thereon. That said debtor has lived on said farm from his birth occupying one of the houses thereon with his wife and children, as his homestead. That said farm has been in the possession of the debtor's family for over 200 years. That said debtor was engaged in the mercantile business from the year 1892 until the year 1930. That during said period the debtor was the owner of a number of mortgages and from time to time loaned money on mortgages. That in the year 1930, as the result of tremendous financial losses he returned to the operation of said farm and has been so doing from the year 1930, devoting the major portion of his time thereto.

[fol. 5] On said farm the debtor has an apple orchard of two hundred trees. In the year 1931, said orchard yielded 1500 bushels of choice apples which were sold in the market by the debtor. From 1933 to 1935 there has been little income derived from the apple crop because the trees have been affected by a blight. The farm also contains a few pear trees the yield of which is sold in the market by the debtor. In addition the debtor cultivates a large garden of about one acre of said farm, planting and raising all kinds of vegetables, fruits and flowers in a quantity more than sufficient to provide for his family. That the debtor also raises hay on said farm and sells the same, as hereinafter set forth. That, in addition thereto, the debtor has repaired the houses, cleaned out one of the wells, laid several miles of stone walls and laid two miles of barbed wire fence; that he has been carting stone from time to time with the aid of help to enable him to rebuild the fences; that he has raised potatoes on said farm and has sold them at wholesale, as hereinafter set forth.

That the debtor is engaged primarily in raising poultry and eggs on said farm having had in the year 1933, two hundred chickens thereon. That in the year 1935, the debtor had about fifty chickens thereon. That at the present time

the debtor has about fifty chickens thereon. That the debtor has three sheep on said farm kept for the purpose of providing food. That the debtor has one horse thereon which [fol. 6] is used for carting and hauling about the farm. That the debtor has a miscellaneous assortment of farm tools thereon none of which have been purchased since the year 1921. That on the tax lists of the town of Trumbull it does not appear that the debtor has listed any farm tools or equipment from 1930 to 1935.

That the debtor's total income per annum from 1930 to 1935 was $4000. The sum of $2200 thereof was derived from renting three-quarters of said farm to various individuals for grazing and cultivation purposes. That one of said tenants conducts a dairy on said farm and breeds, grazes, and milks a herd of cows thereon. That the sum of $200 thereof was derived from the sale of poultry and eggs. That the sum of $75 thereof was derived from the sale of hay. That the sum of $25 thereof was derived from the sale of vegetables and flowers. That the sum of $2200 was derived from the rental of three-fourths of the debtor's farm to others who used it for their own purposes. That the sum of $1500 was derived from the rentals from other real estate not claimed to be farm property.

That the First National Bank & Trust Company of Bridgeport, the creditor-mortgagee, and appellee herein, is a corporation duly organized under the laws of the United States of America and has its principal place of business in the City of Bridgeport, State of Connecticut. That said [fol. 7] bank as trustee is the owner of a certain mortgage on the farm property of the debtor, which mortgage is in the sum of $100,000. That said bank as trustee instituted a suit to foreclose said mortgage in the Superior Court for Fairfield County, State of Connecticut, which suit was returnable on the first Tuesday of June, 1931. That said suit was continued from time to time and various judgments have been entered therein which have been opened from time to time, and that a judgment in said suit was dated November 23, 1934, for the sum of $104,079.75 and that the law day for redemption by the debtor was set as the third Monday of November, 1935. That said property since February 1933 has been under the control of a receiver appointed by the said Superior Court to collect the rents

accruing from said property. That on November 15, 1935, a judge of said Superior Court upon being notified of the filing of the debtor's petition in the United States District Court ordered said judgment of foreclosure to be re-opened and to remain open subject to the determination of these proceedings.

At said hearing of said order to show cause the debtor raised the following questions of law, which were overruled by the Court.

1. That said debtor is an individual who is primarily bona fide personally engaged in producing products of the soil, an individual who is primarily bona fide personally [fol. 8] engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state under the terms of Sub-section R of Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203 (r) and as such entitled to the benefits of said Act.

2. That by virtue of said farming operations, the debtor is entitled to the classification of a "farmer" within the terms of said Section 75 of the Bankruptcy Act irrespective of whether or not the principal part of his income is derived from any one or more of said farming operations.

3. That the principal part of the debtor's income is derived from farming operations under the terms of said Subsection R, 11 U. S. C. A. 203 (r).

4. That the item of $2200 received as rental of the farm property to others is income to the debtor in his capacity as a farmer rather than as a landlord and should be so considered in determining whether or not the principal part of the debtor's income is derived from farming operations.

5. That the debtor is entitled to the benefits of said Section 75 of the Bankruptcy Act.

6. That the evidence was sufficient to establish that said debtor is a "farmer" within the provisions of said Section 75 of the Bankruptcy Act and as such entitled to the benefits thereof.

[fol. 9] At said hearing of said order to show cause the creditor-mortgagee, and appellee herein raised the following question of law:

1. That the total income of the debtor per annum of $4000 being derived as follows: $2200 from rental of the debtor's property for grazing and cultivation purposes, $200 from the sale of poultry and eggs, $75 from hay, $25 from fruit, flowers and vegetables, $1500 from the rental of other real estate not claimed to be farm property; that the debtor actually cultivated about one acre of the land on said farm; and upon this statement of fact the debtor was not a "farmer" as a matter of law within the purview of the said Sec. 75 of the Bankruptcy Act as amended.

In said appeal the debtor, the appellant herein, filed the following assignment of errors based on the ruling of said District Court:

1. That said order rendered on December 2, 1935, and the memorandum of opinion upon which it is based, is contrary to law in all respects.

2. That the District Court erred in dismissing the petition of Francis E. Beach, debtor praying for an opportunity to effect a composition or extension of his debts under Section 75 of the Bankruptcy Act as amended.

3. That the District Court erred in holding that said Francis E. Beach, debtor, is not an individual who is pri- [fol. 10] marily bona fide personally engaged in producing products of the soil, or an individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or that the principal part of his income is not derived from any one or more of the foregoing operations, under Subsection R of Section 75 of the Bankruptcy Act as amended by Act of Congress dated May 15, 1935.

4. That the District Court erred in holding that said Francis E. Beach, debtor is not entitled to the benefits of said Section 75 of the Bankruptcy Act as amended by Act of Congress dated August 28, 1935.

5. That the District Court erred in holding that the item of $2200 received as rental from the farm property is in-

come to the debtor in his capacity as a landlord rather than as one who is bona fide personally engaged in producing products of the soil, under said Subsection R of Sec. 75 as amended by Act of Congress dated May 15, 1935.

6. That the District Court erred in holding that less than one-tenth of the debtor's income is derived from farming operations.

7. That the testimony is not sufficient to support the conclusions reached by the District Court that the said Francis E. Beach, debtor, is not entitled to the benefits of Section 75 of the Bankruptcy Act as amended.

[fol. 11] Henry Greenstein, Attorney for Francis E. Beach, Appellant. Arthur B. Weiss, Attorney for The First National Bank and Trust Company of Bridgeport, Connecticut, Trustee, Appellee.

Dated at Bridgeport, Connecticut, March 11, 1936.

Approved: Carroll C. Hincks, U. S. D. J.

Dated at New Haven, Connecticut, March 11, 1936.

[fol. 12] In United States District Court, District of Connecticut

No. 16,627

In the Matter of Francis E. Beach, Debtor

Memorandum of Decision on Order to Show Cause

At the hearing upon the show cause order herein held this day, in addition to evidence from other sources, the debtor himself testified that for the year 1935 his income had been as follows: $200. from poultry and eggs; $75. from hay; $25. for vegetables and flowers; $2200. from the rental of his farm to others who used it for their own purposes; and $1500. from rentals from other real estate not claimed to be "farm" property.

It was conceded that the debtor's activities during the years prior to 1935 would not strengthen his claim that he is a farmer within the meaning of Sec. 75 of the Bankruptcy Act, as amended.

On this showing I am constrained to rule that the item of $2200, received as rental from the farm property, is income to the debtor in his capacity as a landlord rather than as one who is "bona fide personally engaged in producing products of the soil, etc." That being so, it results that [fols. 13-14] less than one-tenth of the debtor's income is derived from farming operations, and he cannot be held to be "primarily * * * engaged in producing products of the soil". 11 U. S. C. A. 203 (r).

It follows that the debtor's petition must be dismissed and there is no need to pass upon the petitioner's contention that the section of the Act just cited is unconstitutional and void.

So Ordered.

Dated at New Haven this 2nd day of December, 1935.

Carroll C. Hincks, United States District Judge.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 15] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1936

Argued Oct. 7, 1936. Decided Nov. 9, 1936

No. 26

In Re FRANCIS E. BEACH, Debtor

FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, Appellee

v.

FRANCIS E. BEACH, Appellant

Appeal from the District Court of the United States for the District of Connecticut

Before Manton, L. Hand, and Swan, Circuit Judges

Appeal from an order of the District Court for the District of Connecticut, granting a motion to dismiss a petition filed under section 75 of the Bankruptcy Act, as amended (11 U. S. C. A. § 203).

Sydney P. Simons, of Bridgeport, Conn., for appellant.
Arthur B. Weiss, of Bridgeport, Conn., for appellee.

L. HAND, Circuit Judge:

This is an appeal from an order dismissing a petition of the debtor filed under section 75 (c) of the Bankruptcy Act (11 U. S. C. A. § 203 (c)-. On November 14, 1935, the debtor filed the petition alleging that he was a farmer, and asking that he be given an opportunity to compromise or extend his debts. On the same day the judge approved the petition and referred the cause to the proper conciliation commissioner; so the matter stood on November twenty-first, when the First National Bank of Bridgeport, a creditor and mortgagee, moved the court that the proceeding be dismissed, because the debtor was not in fact a farmer, as defined by section 75 (r), as amended (11 U. S. C. A. § 203 (r)-. On December second the judge entered an order granting this motion, and the debtor appealed with leave of this court.

The facts were stipulated as follows. Beach was the owner of a farm of about one hundred and ninety acres, with five houses and a barn on it, where he had lived from his birth, occupying one of the houses with his wife and children, as his homestead. He had been engaged in mercantile pursuits until the year 1930, but in that year as the result of financial losses he began to devote the greater part of his time to work on the place. The land had an apple orchard of two hundred trees, which in 1931 yielded fifteen hundred bushels of apples; but from 1933 to 1935 he got little from his crop because of a blight. He had a few pear trees; and he cultivated a large garden of about one acre, planting and raising all kinds of vegetables, fruits and flowers, more than enough to provide for his family. He raised hay and sold it; repaired the houses, cleaned out one of the wells, laid several miles of stone walls and two miles of barbed wire fence; carted stone from time to time to rebuild his fences; and raised and sold potatoes. He was engaged primarily in raising poultry and eggs, having two hundred chickens in 1933, and about fifty from 1935 to the time of the trial. He kept three sheep for food; one horse, for carting and hauling; and a miscellaneous assortment of farm tools none purchased since 1921. His total income per annum from 1930 to 1935 was $4,000, of which $2,200 was derived from renting three-quarters of the farm to various persons for grazing and cultivation. One of [fol. 16] these tenants conducted a dairy and bred, grazed and milked a herd of cows. Beach earned $200 from the sale of poultry and eggs, $75 from the sale of hay; and $25 from the sale of vegetables and flowers. The rentals from other real estate, not claimed to be farm property, made up the remainder of his income, $1,500.

In spite of the fact that he gave most of his time to work about his farm, we think that Beach was not "primarily * * * personally engaged" in farming. He would not have been so regarded before the enactment of section 75, and we see no reason to impute another meaning to such nearly identical language as it contains. Swift v. Mobley, 28 F. (2d) 610 (C. C. A. 5); In re Spengler (D. C.) 238 F. 862; In re McMurray (D. C.) 8 F. Supp. 449; In re Weis (D. C.) 10 F. Supp. 227. Again, it was also settled that a person who lived on income derived from a farm was not a farmer under section 4 (b), as amended (11 U. S. C. A. §

22 (b)-. In re Glass, 53 F. (2d) 844 (C. C. A. 7); In re Matson (D. C.) 123 F. 743; In re Driver (D. C.) 252 F. 956; In re Brown (D. C.) 284 F. 899. But section 75 (r), as amended (11 U. S. C. A. § 203 (r)-, certainly meant to broaden the class, by contrasting those "personally bona fide engaged" in husbandry with those who merely drew their principal income from it. It seems to us either that "personally" must mean "without any assistants," or that the second clause includes those who live by rents from the farm operations of tenants. We reject the first alternative; a man is no less a farmer because he hires laborers, either regularly or sporadically; he is "personally" engaged in farming, though, being in possession, he rides his acres and superintends the manual labors of others. On the other hand it is certainly a great abuse of words to call that man a farmer, who merely lives upon the yield of farm lands; nor can we see that this is much bettered by confining the clause to leases in which the tenant pays in kind. Nevertheless, notwithstanding the violence done to ordinary usage, we cannot escape the literal meaning of the words chosen. Such a result does not, moreover, violate the probabilities as much as one might at first blush suppose. The occasion for the legislation was the collapse of farm values, following upon the depression, and indeed preceding it. There was a large class who had rented their farms to others, but who were as dependent upon the yield as though they worked the land themselves as they usually had done originally. These people were ordinarily in the same *case* as those who actually farmed; it is not unreasonable to ascribe to Congress an intention to succor them with the rest. Mortgagees may indeed be outside the class, even though the interest be in fact paid out of the earnings of the mortgaged farm; we have not such a case before us. Nor need we hold that the lessor of a farm is within the clause, if the lessee pays the rent from other sources than his own farming. But when the debtor's principal income in fact comes out of the land, we find it impossible to give reasonable effect to the language used, unless we call him a farmer. No circuit court of appeals has passed upon the point; the only district court opinion which does so is In re Hilliker, 9 F. Supp. 948. The judge there appears to have taken the other view, though it was not necessary to the decision; but we cannot agree

that the scope which he leaves to the clause, fills out the full measure of its meaning.

Order reversed.

SWAN, Circuit Judge (dissenting):

I am unable to concur in my brothers' construction of the statute.

[fol. 17] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 16th day of November, one thousand nine hundred and thirty-six.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

In the Matter of FRANCIS E. BEACH, Debtor-Appellant

Appeal from the District Court of the United States for the District of Connecticut

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Connecticut, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed with costs. Further ordered that the order for mandate of this Court heretofore entered herein be and the same hereby is vacated and set aside.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 18] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. In re Francis E. Beach, Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 16, 1936. William Parkin, Clerk.

[fol. 19] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 18, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of In the Matter of Francis E. Beach, Debtor-Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this second day of December, in the year of our Lord one thousand nine hundred and thirty-six, and of the Independence of the said United States the one hundred and sixty-first.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 20] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,161. U. S. Circuit Court of Appeals, Second Circuit. Term No. 621. The First National Bank & Trust Company of Bridgeport, Connecticut, Trustee, petitioner, vs. Francis E. Beach. Petition for a writ of certiorari and exhibit thereto. Filed January 5, 1937. Term No. 621, O. T., 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE,

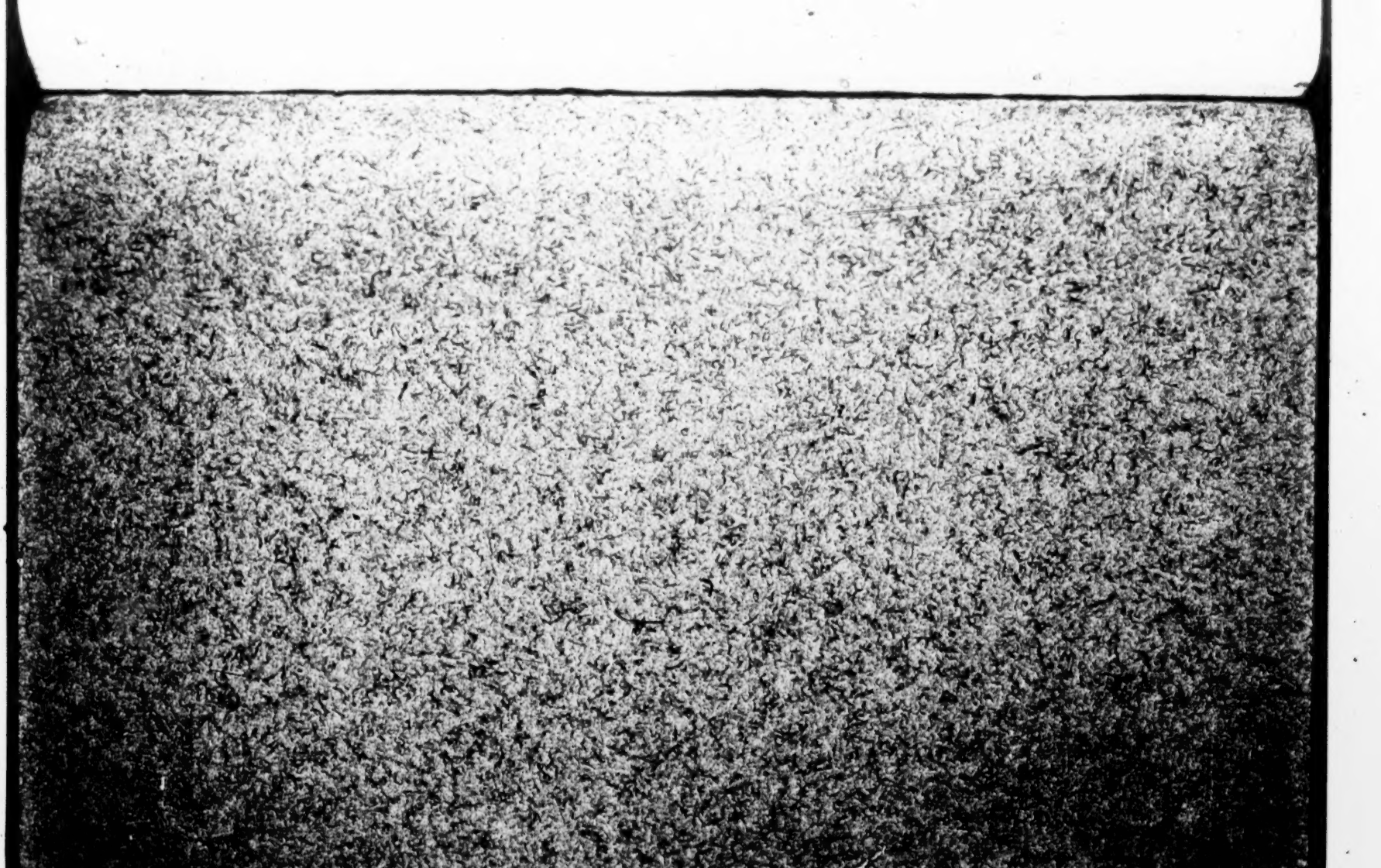
Petitioner,

vs.

FRANCIS E. BEACH.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ARTHUR B. WEISS,
Attorney for Petitioner,
First National Bank & Trust Co.
of Bridgeport, Conn., Trustee.



INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of the facts	8
Question presented	4
Statute involved	1
Reasons relied on for the allowance of the writ	4
Brief in support of petition for certiorari	7
Opinions in courts below	7
Jurisdiction	7
Specification of errors	8
Argument	8
Point I—The Circuit Court of Appeals has decided an important question of Federal law which has not been but should be settled by this Court	8
Point II—The decision of the Circuit Court, by a divided court, reverses the District Court	10
Point III—The decision of the Circuit Court is contrary to the weight of authority	11
Point IV. The decision of the Circuit Court appears to be in conflict with a later decision of the same court In re George B. Sherwood, Appellee, v. Thomas J. Kitcher, — F. (2d) —(not yet reported, which is set forth in full in the appendix	13

Index to Appendix.

A.

Section 4(b) of the National Bankruptcy Act, Title 11 U. S. C. A., 22(b) as amended June 25, 1910, c. 412, Sections 3 and 4	15

B.

Page

Section 75(r), 11 U. S. C. A., Section 203(r), c. 204, Section 1, 47 Stat. 1470 (as enacted March 31, 1933) 15

C.

Opinion In re George B. Sherwood, Appellee, v. Thomas J. Kitcher, Appellant 16

STATUTES CITED.

Section 4(b) of the National Bankruptcy Act, Title 11 U. S. C. A., 22(b) as amended June 25, 1910, c. 412, Sections 3 and 4 2, 15

Section 75(r), 11 U. S. C. A., Section 203(r), c. 204, Section 1, 47 Stat. 1470 (as enacted March 31, 1933) 2, 15

Section 75 of the Bankruptcy Act as amended May 15, 1935, 11 U. S. C. A. 203, c. 114, Section 3, 49 Stat. 246 2, 8

Section 240(a) of the Judicial Code as amended February 13, 1925, c. 229, Section 1, 43 Stat. 938, 28 U. S. C. A., Section 347 7, 8

TABLE OF CASES CITED.

Brown, In re (D. C.), 284 Fed. 899 12

Buffum v. *Barceloux Co.*, 289 U. S. 227 13

Callaghan v. *Reconstruction Finance Corp.*, 297 U. S. 464, 56 S. Ct. 519 10

Conrad, Rubin & Lesser v. *Pender*, 289 U. S. 472, 53 S. Ct. 703 13

Continental Bank v. *Rock Island Railway Co.*, 294 U. S. 648, 55 S. Ct. 595 10

Daniel v. *Guaranty Trust Co.*, 285 U. S. 154 10

Day, In re, 10 F. Supp. 229 (D. C., E. D. Ill.) 9, 12

Fidelity and Deposit Co. v. *Arenz*, 290 U. S. 66, 10

Fullagar, In re, 8 F. Supp. 602 (D. C., W. D. N. Y.) 9

Ginsberg, D. & Sons v. *Popkin*, 285 U. S. 204, 52 S. Ct. 322 13

Glass, In re, 53 F. (2d) 844 12

Page

Hilliker, In re, 9 F. Supp. 948 (D. C., S. D. Cal., C. D.) 9, 11
Knight, In re, 9 F Supp. 502 (D. C., D. Conn.) 9
Local Loan Co. v. *Hunt*, 292 U. S. 234 10
Louisville Bank v. *Radford*, 295 U. S. 555, 55 S. Ct. 854 10
Matson, In re (D. C.), 123 Fed. 743 12
Meyer v. *Kenmore Granville Hotel Co.*, 297 U. S. 160, 56 S. Ct. 405 10
McMurray, In re, 8 F. Supp. 449 (D. C., S. D. Iowa) 9
Peterson, In re, 8 F. Supp. 86 (D. C., W. D. Mich., S. D.) 9
Plumer, In re, 9 F. Supp. 923 (D. C., S. D. Cal., S. D.) 9
Royal Indemnity Co. v. *American Bond and Mortgage Co.*, 289 U. S. 165, 53 S. Ct. 551 13
Sherwood, George B., Appellee, against *Thomas J. Kitcher, Appellant*, C. C. A. (2), not yet reported 9
Storey, In re, 9 F. Supp. 858 (D. C., S. D. Cal., C. D.) 9
Weis, In re, 10 F. Supp. 227 (D. C., S. D. Iowa) 9
Wilkinson, In re, 10 F. Supp. 100 (D. C., E. D. N. Y.) 9

TEXTS

Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States:
Section 320, page 650 9
Section 295, pages 577-579 10, 13
Section 306, page 618 10
Section 320, pages 647-648 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE,
Petitioner,

vs.

FRANCIS E. BEACH.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of The First National Bank and Trust Company of Bridgeport, Connecticut, Trustee, respectfully shows to this Honorable Court:

Summary Statement of Facts and Matters Involved.

The petitioner is the owner of a mortgage on certain real estate belonging to the respondent. Foreclosure was brought on the mortgage, returnable before the Superior Court for Fairfield County in the State of Connecticut on the first Tuesday of June, 1931, and judgment was entered

in that suit setting the day for redemption by the respondent as the third Monday of November, 1935 (R. 7).

On November 14, 1935, the respondent filed a petition in the United States District Court for the District of Connecticut in which he alleged that he was "*bona fide* engaged primarily in producing products of the soil", and in which he sought the benefits of the provisions of Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203, c. 114, Sec. 3, 49 Stat. 246. On that date, the petition was approved and referred to a conciliation commissioner (R. 2).

On November 15, 1935, the Superior Court, on being informed of the filing of the petition in the District Court ordered the judgment of foreclosure to be reopened and to remain open subject to the determination of these proceedings (R. 7).

Your petitioner (First National Bank and Trust Company of Bridgeport, Connecticut, Trustee), thereupon moved in the District Court for an order to show cause why the order approving the respondent's petition should not be vacated and the respondent's petition dismissed on the ground that the respondent was not a farmer within the definition set forth in Subsection (r) of said Section 75 of the Bankruptcy Act (R. 3).

The sub Section of the statute just cited and here involved reads as follows:

"Farmer Defined.

"For the purpose of this section, section 22b and section 202, the term 'farmer' includes not only an individual who is primarily personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall

be deemed a resident of any county in which such operations occur."

[The section above quoted, enacted May 15, 1935, is now in effect and was in effect during the entire course of these proceedings. The wording of the same section prior to the amendment of May 15, 1935, is set forth in the appendix. Some of the cases cited in the brief were decided when the earlier section was in effect, but a comparison of the wording will show that the amendment did not affect the question here involved or the pertinence of the cases cited. (Section 22b, otherwise known as Section 4(b) of the Bankruptcy Act is also set forth in the appendix.)]

After taking evidence, the Judge of the United States District Court, by his order dated December 2, 1935, dismissed the respondent's petition (R. 12-13).

The Circuit Court of Appeals granted leave to appeal (R. 15), and later by a divided court, reversed the District Court (R. 15-18).

The stipulated facts (R. 4, 5 and 6) show that prior to 1930 the respondent was a merchant and for the five years immediately prior to the filing of the petition, his average total income was $4,000.00 per year, divided as follows: $200.00 received from poultry and eggs, $75.00 from hay, $25.00 from vegetables and flowers, $1,500.00 from rentals of real estate not claimed to be farm property, and $2,200.00 from the rental of the claimed farm property.

Both the District Court (R. 12) and the Circuit Court of Appeals (R. 16) found that the respondent was not primarily engaged in producing products of the soil or in farming.

The District Court held that the sum of $2,200.00 received as rent from the farm property was income to the respondent "in his capacity as a landlord rather than as one who is '*bona fide* personally engaged in producing products of the soil, etc.' " (R. 12).

The Circuit Court of Appeals (Circuit Judges Manton, L. Hand and Swan, Judge Hand writing, Judge Swan dissenting) held that the principal part of the income of the respondent, being rent from a farm, constituted the respondent a farmer within the provisions of Subsection (r) of Section 75 of the Bankruptcy Act.

QUESTION PRESENTED.

THE SOLE QUESTION OF LAW INVOLVED HEREIN IS WHETHER AN INDIVIDUAL WHO RECEIVES THE PRINCIPAL PART OF HIS INCOME FROM THE RENT OF A FARM IS A FARMER WITHIN THE PROVISIONS OF SUBSECTION (R) OF SECTION 75 OF THE BANKRUPTCY ACT.

Reasons Relied on for the Allowance of the Writ.

I. The Circuit Court of Appeals has decided an important question of Federal law which has not been but should be settled by this Court.

II. The decision of the Circuit Court, by a divided court, reverses the District Court.

III. The decision of the Circuit Court is contrary to the weight of authority.

It is in conflict with at least two District Court decisions in other circuits, both of which are well reasoned and rely on earlier decisions construing the expression "farmer" as used in another section of the Bankruptcy Act.

IV. The decision of the Circuit Court appears to be in conflict with a later decision of the same court in re George B. Sherwood, appellee, v. Thomas J. Kitcher, — F. (2d) —, not yet reported, which is set forth in full in the appendix.

WHEREFORE YOUR PETITIONER PRAYS the allowance of a writ of certiorari to the United States Circuit Court of Ap-

peals for the Second Circuit in this cause there entitled, "In Re Francis E. Beach, Debtor—The First National Bank and Trust Company of Bridgeport, Connecticut, Appellee *v.* Francis E. Beach, Appellant, October Term, 1936, No. 26," that said cause may be reviewed and determined by this Court and that the judgment of the said Circuit Court of Appeals may be reversed and for such other and further relief as to this Honorable Court may seem proper.

Dated at Bridgeport, Connecticut, December 24, 1936.

THE FIRST NATIONAL BANK & TRUST COMPANY
OF BRIDGEPORT, CONNECTICUT, TRUSTEE,
Petitioner,

By ARTHUR B. WEISS,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE,
Petitioner,

vs.

FRANCIS E. BEACH.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Opinions Below.

The opinion by the United States District Court for the District of Connecticut was written by Judge Carroll C. Hincks. It was filed December 2, 1935, has not been reported and appears on pages 12 and 13 of the record.

The opinion of the Circuit Court of Appeals (Circuit Judges Manton, L. Hand and Swan, Judge Hand writing, Judge Swan dissenting), which opinion reverses the order of the District Court, was filed November 16, 1936 and appears on pages 15, 16, 17 and 18 of the record. It is reported in 86 F. (2d) 88.

Jurisdiction.

The jurisdiction of this Court to issue the writ of certiorari applied for is predicated upon Section 240(a) of the

Judicial Code as amended by the Act of Feburary 13, 1925. (c. 229, Sec. 1, 43 Stat. 938.) (28 U. S. C. A., Sec. 347.).

The judgment and the decree sought to be reviewed was issued by the United States Circuit Court of Appeals for the Second Circuit on the 16th day of November, 1936 (R. 18).

The within petition for review was docketed with the clerk of this Court within three months after the entry of the order of reversal by the Circuit Court of Appeals.

Statement of the Case.

The agreed facts are set forth concisely on pages 4, 5 and 6 of the record and in the foregoing petition.

Specification of Errors.

1. The Circuit Court of Appeals erred in reversing the judgment of the District Court in holding that an individual who receives the principal part of his income from the rent of a farm is a farmer within the terms of Subsection (r) of Section 75 of the Bankruptcy Act.

2. The Circuit Court of Appeals erred in holding that the respondent received the principal part of his income from the rent of a farm.

ARGUMENT.

I.

The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

Since it is obvious that this case involves the interpretation of a Federal statute, not heretofore passed on by this Court, the only question is whether it is of sufficient

importance for this Court to exercise its discretion in favor of granting the writ.

This Court is aware of the large number of cases pending in the lower Federal Courts, involving Subsection (r) of Section 75 of the Bankruptcy Act here in question. The question of interpretation of this section has arisen in the following cases:

In re Hilliker, 9 F. Supp. 948 (D. C., S. D. Cal. C. D.);
In re Day, 10 F. Supp. 229 (D. C., E. D. Ill.);
In re Storey, 9 F. Supp. 858 (D. C., S. D. Cal., C. D.);
In re Wilkinson, 10 F. Supp. 100 (D. C., E. D. N. Y.);
In re Weis, 10 F. Supp. 227 (D. C., S. D. Iowa);
In re George B. Sherwood, Appellee against *Thomas J. Kitcher, Appellant*, C. C. A. (2), not yet reported (opinion set forth in appendix).

See

In re McMurray, 8 F. Supp. 449 (D. C., S. D. Iowa);
In re Knight, 9 F. Supp. 502 (D. C., D. Conn.);
In re Peterson, 8 F. Supp. 86 (D. C., W. D. Mich., S. D.);
In re Fullagar, 8 F. Supp. 602 (D. C., W. D. N. Y.);
In re Plumer, 9 F. Supp. 923 (D. C., S. D. Cal., S. D.).

Where such a situation exists, to wit:

(a) a novel question of current importance;

(b) numerous cases pending in the lower Courts in which the question is involved,

(c) a confused state of authorities, and

(d) the question is one of interpretation of the Bankruptcy Act,

this Court, in the interest of law and in order to avoid the necessity for numerous appeals, has granted certiorari.

Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, Sec. 320, page 650;

Meyer v. *Kenmore Granville Hotel Co.*, 297 U. S. 160, 56 S. Ct. 405;

Callaghan v. *Reconstruction Finance Corp.*, 297 U. S. 464, 56 S. Ct. 519.

See also:

Robertson & Kirkham, op. cit. Sec. 295, page 577-579;

Local Loan Co. v. *Hunt*, 292 U. S. 234;

Continental Bank v. *Rock Island Railway Co.*, 294 U. S. 648, 55 S. Ct. 595;

Louisville Bank v. *Radford*, 295 U. S. 555, 55 S. Ct. 854;

Fidelity and Deposit Co. v. *Arenz*, 290 U. S. 66;

Daniel v. *Guaranty Trust Co.*, 285 U. S. 154.

This case ought to appeal particularly to this Court as one meriting its review since the Circuit Court, in its opinion (R. 17) admits that its decision is made "notwithstanding the violence done to ordinary usage" and notwithstanding that "it is certainly a great abuse of words to call that man a farmer who merely lives upon the yield of farm lands".

II.

The decision of the Circuit Court, by a divided court, reverses the District Court.

Although it is conceded that the mere fact that the Circuit Court, by a divided decision, reversed the decision, would not of itself warrant the granting of the writ, nevertheless it is urged that this fact should be given consideration together with the other reasons urged herein.

Robertson and Kirkham, op. cit., Sec. 306, page 618.

III.

The decision of the Circuit Court is contrary to the weight of authority.

It is in conflict with at least two District Court decisions in other circuits, both of which are well reasoned and rely on earlier decisions construing the expression "farmer" as used in another section of the Bankruptcy Act.

The Circuit Court admits (R. 17) that its decision is in conflict with the following decision:

In re Hilliker, 9 F. Supp. 948 (D. C. S. D. Cal. C. D.).

In that case Judge James said:

> "As I read the definition, in the light of the apparent intent of Congress, it is that the individual in all cases must be engaged 'primarily' in farming operations; and that the additional clause 'or the principal part of whose income is derived from farming operations' was inserted as a precaution against a bona fide farmer being otherwise classed, where for instance, during bad years and where the farmer's returns are less than the cost of operation and the farmer is obliged temporarily to engage in some other occupation to earn a livelihood, he is not to be deprived of his true character and so denied the benefit of the act."

The Court there further said:

> "It is regrettable that we have no decisions up to this date by the Supreme Court of the United States or the Circuit Courts of Appeals to furnish a rule by which the trial courts may be guided. The case in hand is one suited for use in obtaining an interpretation by the Court of Appeals. I am hopeful that counsel for petitioner will take the matter there."

And again, *In re Day*, 10 F. Supp. 229 (D. C. E. D. Ill.), the Court said:

> "The Court is of the opinion that there is little distinction between the phrase 'engaged chiefly in farming' and that of 'personally • • • engaged primarily in farming' or that of 'the principal part of whose income is derived from farming operations' • • •
>
> "Consequently the reasoning of the Courts interpreting the language used in the original act is persuasive." (Section 4(b) National Bankruptcy Act.)

The Court there then cited

In re Brown (D. C.), 284 Fed. 899;
In re Matson (D. C.), 123 Fed. 743;
In re Glass, 53 F. (2d) 844.

All of these cases hold that one who derives his income from the rent of a farm is not thereby constituted a farmer. These cases were cited by the Circuit Court in its opinion in the instant case with approval (R. 17). The Court then went on to say:

> "Again it was also settled that a person who lived on income derived from a farm was not a farmer."

Nevertheless it refused to follow the reasoning of those cases.

It is therefore apparent that the decisions involving the section of the Bankruptcy Act here in question are inconsistent in theory and are in such confusion as to leave doubt as to the true intent and meaning of the statute. Where there is a conflict in the decisions of various District Courts concerning a currently important question involving interpretation of the Bankruptcy Act and where a Court below has called attention to the confused state of the authorities

as *In re Hilliger* (cited above), this Court has in the interest of clarity and uniformity granted certiorari.

Robertson and Kirkham, op. cit., Sec. 295, page 579;

Royal Indemnity Co. v. *American Bond and Mortgage Co.*, 289 U. S. 165, 53 S. Ct. 551;

D. Ginsberg & Sons v. *Popkin*, 285 U. S. 204, 52 S. Ct. 322;

Robertson and Kirkham, op. cit., Sec. 320, pages 647-648;

Conrad, Rubin & Lesser v. *Pender*, 289 U. S. 472, 53 S. Ct. 703;

Buffum v. *Barceloux Co.*, 289 U. S. 227.

It is reasonable to assume that the reason that there is no present conflict between Circuit Courts of Appeals is that the statute involved has been only recently enacted.

IV.

The decision of the Circuit Court appears to be in conflict with a later decision of the same court in re George B. Sherwood, appellee, v. Thomas J. Kitcher, — F. (2d) —, not yet reported, which is set forth in full in the appendix.

In *Sherwood, Appellee*, v. *Kitcher, Appellant* (opinion set forth in appendix), the Circuit Court which decided the principal case said:

> "On the other hand, if we look to the second clause of section 75(r) and interpret it, as we did in In re Beach, still the petition should be dismissed, because the greater part of Kitcher's income did not come from farming operations. In this aspect of the case he asks us to count the gross return from his farm and not the net. This would falsify the statute; * * * it would be a meaningless test to compare the gross return from the farming with those from another business"

In the instant case it is obvious that the same Court did measure the total return of the farm, to wit: $2,200.00 as against income from other sources. It gave no consideration to the fact that the farm was subject to taxes and to a mortgage of $100,000.00 on which interest had to be paid so that in fact there was no net income from the rent. No inquiry was made in the District Court as to whether any part of the $2,200.00 received as rent was net income since the Court there indicated that rent, whether gross or net, could not be considered as income derived from farming.

For the foregoing reasons it is respectfully submitted that the writ of certiorari should be granted.

THE FIRST NATIONAL BANK & TRUST COMPANY
OF BRIDGEPORT, CONNECTICUT, TRUSTEE,
By ARTHUR B. WEISS,
Its Attorney.

APPENDIX.

A.

Section 4(b) of the National Bankruptcy Act, Title 11 U. S. C. A. 22(b) as amended June 25, 1910, c. 412, sections 3 and 4, reads as follows:

> "Any natural person, except a wage earner or a farmer, any unincorporated company, and any monied business or commercial corporation (except a municipal railroad, insurance or banking corporation or a building and loan association) owing debts to the amount of $100,000 or over, may be adjudicated an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefit of this Act."

B.

Section 75(r), 11 U. S. C. A., section 203(r), c. 204, section 1, 47 Stat. 1470, as originally enacted March 3, 1933, read as follows:

> "For the purpose of this section, the term 'farmer' means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur."

C.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

GEORGE B. SHERWOOD, *Appellee,*

against

THOMAS J. KITCHER, *Appellant.*

Before L. Hand, Swan and Chase, Circuit Judges.

Appeal from an order of the District Court for the District of Connecticut dismissing a proceeding under Section 75 of the Bankruptcy Act.

Sydney P. Simons for the appellants.
John V. Donnelly for the appellee.

L. HAND, *Circuit Judge*:

This is an appeal by Kitcher, the debtor, from an order in bankruptcy, dismissing his petition under Section 75 of the Bankruptcy Act on motion of a mortgagee. The only question is whether the petitioner was a "Farmer", within the meaning of subdivision r. Kitcher lived upon a farm of one hundred and seventeen acres which he owned, twenty-five acres of which he worked, and from which he had at least partially supported himself until the depression. When farm products fell so low that he could no longer make a living, he took a steady job as a moulder, a trade which he had learned in his youth, and at which he had indeed worked off and on all his life. At the time he filed his petition he had been so employed for six years, working five days a week for over nine hours a day, counting his goings and comings. He also still worked on his farm, mornings, evenings, Saturdays and Sundays; but this could scarcely have amounted to more than thirty- or thirty-five hours a week even in summer. For the years 1933, 1934 and 1935, his aggregate earnings as a moulder had been $4738.96, and from the farm, nothing but such produce as

he consumed; his net returns from it in cash were nil, though his gross was $4920. The judge dismissed the petition and Kitcher appealed with our leave.

We have just decided (In re Beach, 86 F. (2) —), following earlier decisions under Section 4 (b), that a man who gives all his working hours to two or three acres of land from which he does not and cannot make a living, is not a farmer; but that if such a one receives the greater part of his income from the rent of farm lands, he is within the second clause of Section 75(r). The district judge here assumed that Kitcher would have been "primarily bona fide personally engaged" in farming, if his earnings from farming had been greater than what he earned elsewhere; but, as they had not been, he dismissed the petition. We do not wish to be understood as accepting that test; we need not say that one who gives all his time to unsuccessful farming on a large enough scale to count, is not a farmer because he has an outside income on which he lives. In the case at bar, judged either by the hours spent or by his returns, Kitcher was not a farmer; and if there be any other test, as perhaps there may be, none has been suggested to us.

On the other hand, if we look to the second clause of Section 75 (r) and interpret it, as we did in In Re Beach, *supra,* still the petition should be dismissed, because the greater part of Kitcher's income did not come from farming operations. In this aspect of the case he asks us to count the gross return from his farm and not the net. That would falsify the statute; the seed, the manure, the tools, the draught animals, the wagons, the planters and reapers; all these and more must be paid for out of the gross return before any "income" results. It would be a meaningless test to compare the gross returns from the farming with those from another business; the result would have no relation either to the demands of the farm upon the debtor's time, or to his dependence upon it, the relevant factors. True, the statute was primarily designed to relieve unsuccessful farmers, and we have assumed arguendo that one whose principal work is bona fide farming is within it, win

or lose; but if he gives the greater part of his working hours to something else, it cannot matter that the gross returns from some incidental farming exceed the net or gross of his other income. Nor can we count it that in the past Kitcher actually supported himself from his farm and was forced to become a moulder by the fall in farm products. When he escaped from the class which the statute meant to succor, he escaped; the occasion for his shift did not continue the privileges of those who were not so fortunate.

Order affirmed.

(8534-C)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE,

Petitioner,

vs.

FRANCIS E. BEACH,

Respondent.

BRIEF FOR PETITIONER.

ARTHUR B. WEISS,
703 Security Building,
Bridgeport, Conn.
Attorney for Petitioner.

INDEX.

SUBJECT INDEX.

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	4
Statement of the Case	2
Specification of Errors to be Urged	4
Summary of Argument	5
Argument	8
I.	
The sole question for this Court to determine is whether the debtor comes within the statute by reason of the fact that the principal part of his income is derived from the rent of a farm	8
II.	
The decision of the Circuit Court is based on two unwarranted assumptions	12
III.	
The Circuit Court violated the applicable rules of construction	14
A. The debtor does not come "within the literal meaning of the words chosen"	16
B. The debtor is not within the class which Congress intended "to succor"	19

PAGE

C. The statute should be strictly construed 27

D. The intent of the legislature should be deduced from reading the law as a whole 29

Conclusion 34

INDEX TO APPENDIX.

A.

Section 4(b) of the National Bankruptcy Act, Title 11 U. S. C. A., 22(b) as amended June 25, 1910, c. 412, Sections 3 and 4 36

B.

Section 75(r), 11 U. S. C. A., Section 203(r), c. 204, Section 1, 47 Stat. 1470 (as enacted March 3, 1933) 36

TABLE OF CASES

Alexander v. Cosden Co., 290 U. S. 484 29
Blair v. Chicago, 201 U. S. 400 29
Brown, In re (D. C.) 284 Fed. 899 11
Brown v. Duchesne, 19 How. 183 30
Church of the Holy Trinity v. United States, 143 U. S. 457 20, 32
Costanzo v. Tillinghast, 278 U. S. 341 29
Day, In re, 10 F. Supp. 229 19, 31
Disney, In re, 219 Fed. 294 10
Driver, In re (D. C.) 252, F. 956 11
Ginsberg & Sons v. Popkin, 285 U. S. 204 29
Glass, In re, 53 F. (2d) 844 11

PAGE

Hecht v. Malley, 265 U. S. 144 31
Hellmich v. Hellman, 276 U. S. 233 29
Helvering v. New York Trust Co., 292 U. S. 455 16, 20, 28, 31
Hilliker, In re, 9 F. Supp. 948 18, 31
Iselin v. United States, 270 U. S. 245 27
Larson v. South Dakota, 278 U. S. 429 29
Leland, In re, 185 Fed. 830 11
Levy's Lessee v. McCartee, 6 Pet. 102 15
Louisville Bank v. Radford, 295 U. S. 555 20
Lynch v. Alsworth-Stevens Co., 267 U. S. 364 15
Mackey, In re, 110 Fed. 335 10
Matson, In re, 123 F. 743 (D. C.) 11
McMurray, In re, 8 F. Supp. 449 (D. C.) 9
Norwegian Nitrogen Co. v. United States, 288 U. S. 294 15
Old Colony R. Co. v. Commissioner, 284 U. S. 552 15
Ozawa v. United States, 260 U. S. 178 30
Pacific Co. v. Johnson, 285 U. S. 480 28
Palma Bros., In re, 8 F. Supp. 920 24
Sherwood v. Kitscher, 86 F. (2d) 750 (C. C. A. 2) 12
Spengler, In re (D. C.) 238 F. 862 9
Swift v. Mobley, 28 F. (2d) 610, (C. C. A. 5) 9
Trotter v. Tennessee, 290 U. S. 354 28
United States v. Fischer, 2 Cranch 358 32
United States v. Katz, 271 U. S. 354 18
United States v. St. Paul M. & M. Ry. Co., 247 U. S. 310 29
Weis, In re (D. C.) 10 F. Supp. 227 10
Woolford Realty Co. v. Rose, 286 U. S. 319 15

PAGE

STATUTES.

Bankruptcy Act of 1898 as amended,
Section 4(b) 11
Section 74 27, 32
Section 74(l) 24
Section 75(r) 8
Section 75(s) (2) 33, 34
Section 77 24
Section 77B 24
Judicial Code, Section 240(a) 2

MISCELLANEOUS.

Census of 1920, Agriculture, Farm Tenure, Vol. V., p. 133 T. 11 21
Congressional Record, Vol. 76, page 213 22
Congressional Record, Vol. 76, pages 4876-4877 24
Hanna, John, Agriculture and the Bankruptcy Act 26
House Doc. No. 9, p. 9, 73d Cong., 1st Sess. 21
House Report 455, 74th Cong., 1st Sess. 24, 25
House Report 1897, 72d Cong., 2nd Sess. 25
House Report 2063, 73d Cong., 2nd Sess. 25
House Report 1844, 73d Cong., 2nd Sess. 25
House Report 1898, 73d Cong., 2nd Sess. 25
House Report 570, 74th Cong., 1st Sess. 26
Minnesota Law Review 26
Ruling Case Law 18, 28, 29
Senate Report 1212, 72d Cong., 2nd Sess. 25
Senate Report 1215, 73d Cong., 2nd Sess. 25
Senate Report 498, 74th Cong., 1st Sess. 26
Sutherland, Statutory Construction 28
Yearbook of Agriculture (1923) 21

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, Trustee,

Petitioner.

vs.

FRANCIS E. BEACH,

Respondent.

BRIEF FOR PETITIONER.

Opinions Below.

The opinion by the United States District Court for the District of Connecticut was written by Judge Carroll C. Hincks. It was filed December 2, 1935, has not been reported and appears on pages 7 and 8 of the record.

The opinion of the Circuit Court of Appeals (Circuit Judges Manton, L. Hand and Swan, Judge Hand writing, Judge Swan dissenting), which re-

The petitioner urges that the intent of the statute was to prevent the increase of farm tenancy and that the inclusion of persons in the situation of the respondent would not carry out the intent of Congress, inasmuch as his farm is already being operated by tenants.

It is submitted that the controlling purpose of Congress in the passage of the Act was to preserve the ownership and enjoyment of farm property to the mortgagor. This Court has recognized that such was the purpose of Congress.

Louisville Bank v. Radford 295 U. S. 555, 594

At the time of the passage of the Act the owners of farms were faced with widespread foreclosure of their mortgages which was resulting, and if permitted to continue would result, in transferring ownership of farm lands to corporations, banks, and insurance companies. Congress appreciated the gravity of the situation and sought to protect a basic industry of the nation from being undermined and destroyed. The intent of Congress was to meet the emergency and to prevent agriculture as an industry from facing ruination, as well as to aid the individual farm debtor.

It can not be reasonably urged that Congress being fully aware of the extent of farm tenancy in the United States at the time of the passage of the Act sought to deny the benefits of the Act to the vast number of landlords of farms who were as dependent on the yield of the farms as though they had worked the land themselves, as they had usually done originally. Rather, it can be urged that Congress concluded that it was more conducive to the welfare of the agricultural industry that individual landlords retain the

ownership of their farm lands rather than that the ownership thereof be transferred to corporations, banks and insurance companies.

The petitioner urges that nowhere in the Congressional Record can any intent be found to include individuals who derive the principal part of their income from the rental of farm lands.

It is submitted that the failure of discussion in Congress to reveal any intent to include the landlords of farm lands cannot serve to overcome the evidence of the intent of Congress as drawn from the plain language of the Act itself and its evident purpose.

Hecht v. Malley 265 U. S. 144, 155, 156.

The range of the amendment of May 15, 1935 shows an intent on the part of Congress to widen rather than restrict the statutory definition.

Lincoln v. Ricketts 297 U. S. 373, 375.

See:

Report 455, 74th Congress, 1st Session, House of Representatives, March 20, 1935.

C. AS TO PETITIONER'S CONTENTION THAT THE STATUTE SHOULD BE STRICTLY CONSTRUED.

Section 75 of the Bankruptcy Act was designed to promote the general welfare of the nation by preserving a basic industry that was faced with ruination as the result of economic conditions. Congress intended by the Act to provide a remedy for a condition that threatened calamity to the nation. Section

75 is clearly remedial legislation and as such is entitled to receive a broad and liberal interpretation in favor of the individuals for whom relief was intended. In view of the obvious intent of Congress to extend relief not only to those personally engaged in farming but also to the mortgagors of farm lands, the act should not be construed narrowly as to defeat the true intent of Congress.

> **Royal Indiana Co. v. American Bonding Co. 289 U. S. 165, 169.**
>
> **City Bank Farmers Trust Co. v. Irving Trust Co., No. 260, October Term, 1936.**

D. AS TO PETITIONER'S CONTENTION THAT THE INTENT OF THE LEGISLATURE SHOULD BE DEDUCED FROM READING THE LAW AS A WHOLE.

It is submitted that when Section 75 of the Bankruptcy Act is considered as a whole together with its objects and policy, it becomes clear and certain that the respondent is entitled to the benefits thereof according to the true intent and meaning of the Act.

The respondent owns and resides on a farm, is personally engaged in farming operations on a portion thereof consisting of 47½ acres devoting the major portion of his time thereto, and in addition receives the principal part of his income from the rental of 142½ acres thereof used by various tenants for farming purposes. (R. 8, 4).

Congress by the amendment of May 15, 1935, (Appendix A), made the definition of a "farmer" uniform by making said statutory definition apply to

Sec. 4 (b) of the Bankruptcy Act, U. S. C. Tit. 11, Sec. 22 (b), (Appendix A).

Sec. 4 (b) of the Bankruptcy Act, U. S. C. Tit. 11, Sec. 22 (b) (Appendix C), before May 15, 1935, provided that an involuntary petition could be filed against "any natural person except a wage earner or a person engaged chiefly in farming or tillage of the soil—."

On May 15, 1935, Sec. 4 (b) was amended (Appendix D), so as to provide that an involuntary petition could be filed against "any natural person except a wage earner or a farmer—."

It is reasonable to assume that Congress by the amendment of May 15, 1935, not only intended to broaden the definition of a farmer for the purposes of Sec. 4 (b) and Section 75 (r), but also intended that the decisions under Sec. 4 (b) prior to the amendment of May 15, 1935, should not be controlling on the question of whether a person is a farmer within Section 75.

Prior to the amendments of May 15, 1935, some District Courts held that the decisions under Sec. 4 (b) controlled on the question of who is a farmer under Sec. 75, while other District Courts held that the decisions under Sec. 4 (b) were not controlling. It is submitted that Congress intended to remove beyond any doubt by the amendments of May 15, 1935, that the decisions under Sec. 4 (b) prior to May 15, 1935 were not controlling on the question of who was a farmer within Sec. 75.

See:

In re Hilliker, supra

In re Day, supra

Matter of Palma Bros, 8 F. Supp. 920 (D. C. D. Nev.)

In re Wilkinson, 10 F. Supp. 100 (D. C. D. N. Y.)

Since the amendment of May 15, 1935, the District Courts have had no difficulty in determining that the decisions under Sec. 4 (b) before the said amendment were not controlling.

In re Shonkwiler, supra

In re Wright, supra

The title of Section 75 of the Bankruptcy Act describes the Act as relating to "Agricultural Compositions and Extensions". This seems to indicate that the Act was intended to aid those dependent on agriculture rather than only those personally engaged in farming.

Sub-section (r) of Section 75 as amended (Appendix A), provides in part "and a farmer shall be deemed a resident of any county in which such operation shall take place. The use of the word **"any"** demonstrates that it was appreciated by Congress that landlords of farms might in their operations extend into more than one county.

Sub-section (r) of Section 75, as amended, (Appendix A), further provides that the personal represen-

tative of a deceased farmer is included within the benefits of the Act. If the purpose of the Act was solely to aid the individual personally engaged in farming and not also to conserve farm lands and homes, and to protect those dependent on the yield of farms, it is submitted that there would be no need to extend the benefits of this Act to the personal representative of a deceased farmer.

CONCLUSION

The judgment of the Circuit Court that the respondent merited the classification of a "farmer" within the terms of the Sub-section (r) of Section 75 of the Bankruptcy Act, as amended, by reason of the fact that he derived the principal part of his income from farming operations was not only reasonable and just but also in accordance with the true meaning and intent of the Act.

It is respectfully submitted, that the judgment of the Circuit Court should be affirmed.

Respectfully Submitted,

SYDNEY P. SIMONS,

Counsel for the Respondent.

APPENDIX

A.

Sub-section (r) of Section 75 of the Bankruptcy Act, U. S. C., Tit. 11, Sec. 203 (r) (1936 Supp.), C. 114, Sec. 3, 49 Stat. 246, as amended May 15, 1935, the interpretation of which is involved herein, reads as follows:

> "For the purposes of this section, section 22 (b) and section 202, the term "farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations; and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur".

B.

Sub-section (r) of Section 75 of the Bankruptcy Act, U. S. C., Tit. 11, Sec. 203 (r) (1935 Supp.), C. 204, Sec. 1, 47 Stat. 1473, as originally enacted March 3, 1933, read as follows:

> "For the purpose of this section, the term "farmer" means any individual who is personally bona fide engaged primarily in farming opera-

tions, or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur".

C.

Section 4 (b) of the Bankruptcy Act, U. S. C. Tit. 11, Sec. 22 (b), C. 38, 47 Stat. 47, as amended Feb. 11, 1932, read as follows:

"Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed business, or commercial corporation (except a municipal, railroad, insurance, or banking corporation, or a building or loan association) owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.

The bankruptcy of a corporation or association shall not release its officers, directors or stockholders, as such, from any liability under the laws of a State or Territory or of the United States".

D.

Section 4 (b) of the Bankruptcy Act, U. S. C. Tit. 11, Sec. 22 (b) (1936 Supp.), C. 114, Sec. 1, 49 Stat. 246, as amended May 15, 1935, reads as follows:

"Any natural person, except a wage earner or a farmer, any unincorporated company, and any

moneyed business, or commercial corporation (except a municipal, railroad, insurance or banking corporation, or a building and loan association) owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.

The bankruptcy of a corporation or association shall not release its officers, directors or stockholders, as such, from any liability under the laws of any State or Territory or of the United States".

SUPREME COURT OF THE UNITED STATES.

No. 621.—October Term, 1936.

The First National Bank & Trust Company of Bridgeport, Connecticut, Trustee, Petitioner, *vs.* Francis E. Beach, Respondent.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 17, 1937.]

Mr. Justice Cardozo delivered the opinion of the Court.

The question is whether respondent, who has filed a petition under section 75 of the Bankruptcy Act (11 U. S. C. § 203) for the composition or extension of his debts, is a farmer as there defined.

The facts are stipulated as follows: Beach was the owner of a farm with five houses and a barn on it where he had lived from his birth, occupying one of the houses with his wife and children as his homestead. The farm had been in the ownership of his family for two centuries and over. For a time he had been engaged in mercantile pursuits, but in 1930 owing to heavy financial losses he began working on the farm again, and has given most of his time to it ever since. The land had an apple orchard of two hundred trees which gave him 1500 bushels of choice apples in 1931. He got little out of the orchard from 1933 to 1935, the trees during those years being affected by a blight. He sold pears from a few pear trees, and cultivated a large garden of about one acre, planting and raising all kinds of vegetables, fruits and flowers, more than enough to provide for his family. He raised hay and sold it, repaired the houses, cleaned out one of the wells, laid several miles of stone walls and two miles of barbed wire fence, carted stone from time to time to enable him to rebuild his fences, and raised and sold potatoes. He was occupied principally in raising poultry and eggs, having two hundred chickens in 1933, and about fifty from 1935 to the time of the trial. He kept three sheep for food; one horse for carting and hauling; and a miscellaneous assortment of farm tools, none purchased since 1921. His total income per annum

from 1930 to 1935 was $4,000, of which $2200 was derived from renting three-quarters of the farm to various persons for grazing and cultivation. One of these tenants conducted a dairy, and bred, grazed and milked a herd of cows. The earnings from the sale of poultry and eggs were $200, from the sale of hay $75, and $25 from the sale of vegetables and flowers. Rentals from other real estate, not claimed to be farm property, made up the remainder of his income, $1500. The farm in its entirety was subject to a mortgage of $100,000, held by a bank, and now under foreclosure.

When section 75 of the Bankruptcy Act was adopted in March, 1933, subsection (r) defined a farmer as follows: "For the purpose of this section and section 74, the term 'farmer' means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur." Act of March 3, 1933, c. 204, 47 Stat. 1467, 1470, 1473; 11 U. S. C. § 203 (r).

The definition was amplified on May 15, 1935 by the following amendment: "For the purposes of this section, section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur." Act of May 15, 1935, c. 114, sections 3, 49 Stat. 246; 11 U. S. C. § 203 (r).

A petition for relief under the section as thus amended was filed by the debtor on November 14, 1935, and was opposed by the mortgagee, the petitioner here. The District Court held that the debtor was not a farmer within the meaning of the statute, and so dismissed the proceeding. An appeal was allowed by the Court of Appeals for the Second Circuit, which reversed the judgment of dismissal, one judge dissenting. 86 F. (2d) 88. The reversal went upon the ground that the principal income of the debtor was de-

rived from farming operations, if rents from the farm tenants ($2200) were included in the reckoning, as the court held that they should be. We granted certiorari, an important question being involved as to the meaning of an act of Congress.

The only effect of the 1935 amendments of the statute, in so far as they have to do with the definition of a farmer, was to make it clear that farming operations include dairy farming and the production of poultry and livestock products in their unmanufactured state as well as the cultivation of the products of the soil. There had been decisions to the contrary. *In re Palma Bros.*, 8 F. Supp. 920; *In re Stubbs*, 281 Fed. 568; House Report, No. 455, 74th Congress, 1st session, p. 2; Senate Report, No. 498, 74th Congress, 1st session, p. 4. For the purpose of the case at hand the amendments may be laid aside and the simpler phraseology of the section as it stood at the beginning may be accepted as the test. Was respondent a farmer because "personally bona fide engaged primarily in farming operations" or because "the principal part of his income was derived from farming operations"?

We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of some one who personally or primarily was engaged in different activities. A catalogue of such occasions might err for excess or for defect if made up in advance. Hypothetical situations are laid before us, and the argument is pressed that the definition will breed absurdity if applied to this one of them or that. We refuse to be led away from the limitations of the concrete case. The words "primarily engaged", as we find them in the first branch of the definition, do not constitute a term of art. The words "income derived from farming operations" do not constitute such a term. In every case the totality of the facts is to be considered and appraised. We pass to that appraisal here.

1. Beach, the respondent, must be held, when the facts are viewed in combination, to have been "personally" and "primarily" engaged in farming operations.

He was in that business or in none. He was either a farmer or a man of leisure. Cf. *In re Glick*, 26 F. (2d) 898, 400. But the

stipulation makes it clear that this last he certainly was not. He was in direct or personal possession of forty-eight acres, one-fourth of the large farm which had been in his family for years. A substantial part of this acreage he cultivated with his own labor, or applied, again with his own labor, to other agricultural uses. He did this, not for diversion or only in spare hours, but as an engrossing occupation, consuming, in the words of the stipulation, "the major portion of his time." The products of his toil were food for him and his dependents, and the farmhouse was a home. True, the money returns were scanty. To some extent this was so because of the blight which fell upon his apple orchard in 1932 or later, cutting down the revenues yielded from that source. The scantiness of the yield may have turned him into a bankrupt, but it did not change his occupation. One does not cease to be a farmer because drought or wind or pest may have rendered the farm barren. The critical fact is that the debtor worked an acreage large enough to count, that he did not work at anything else, and that he gave to this work, whether profitable or unprofitable, "the major portion of his time."

2. If Beach was a farmer because he cultivated a substantial farm, he did not step into another business by leasing other acres of the tract to tenants who were to use what they hired for grazing or cultivation and other farming operations. We shall point out in a moment that the acres personally cultivated and those occupied by tenants are phases and aspects of a unitary calling. The result will be the same, however, though the farming and the leasing be viewed as disconnected, and not as parts of a composite whole. In that view, the farming is still the business; the leases are then investments, more profitable than the business, but leaving it unchanged. A farmer remains a farmer, just as a lawyer remains a lawyer, though the returns on his investments, while not enough to keep him going, are larger, none the less, than the profits of his labor.

3. The picture, however, is distorted if Beach is looked upon as a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and made him not less, but more a farmer than he would have been without them. How the case would stand if he had been a merchant or a doctor and had leased a tract of farming land to tenants, we do not have to say.

What has happened here is different. The farming and the leasing must be viewed in combination if we are to gain a true perspective, the two tied together as principal and incident. A single tract of land belonging to the debtor has been worked by him in part, and in part worked by others to whom a section of the tract has been let for cultivation. Far from stepping into another business, he has been faithful to the old one in thus dividing up the tillage. To get a living out of the land in one way or another is the thread of common purpose that binds the labor and the leases, and enables us to find in them the tokens of the same vocation. In brief the man is seen to be a farmer by every test of common speech, though his income has been garnered in rents as well as products. We emphasize the fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting. Cf. *Surace* v. *Danna*, 248 N. Y. 18, 21; *Towne* v. *Eisner*, 245 U. S. 418, 425; *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50. In the setting of this enterprise, the totality of its circumstances, the roots of the respondent's income go down into the soil.

4. Cases in other courts relied upon by the petitioner as excluding the respondent from the category of farmers are consistent for the most part with the ruling now made when the opinions are read with due relation to the facts.

Either the debtor posing as a farmer was engaged at the same time in some other line of business or the plots in cultivation were too small to make a farm. *Swift* v. *Mobley*, 28 F. (2d) 610; *In re Spengler*, 238 Fed. 862; *In re McMurray*, 8 F. Supp. 449; *In re Weis*, 10 F. Supp. 227.

The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.